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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,312	10/10/2003	Donna Gail Schneider	DGS001	3321
7590 02/17/2006 DONNA G SCHNEIDER 5880 DERBY ROCK LOOP MANITOU SPRINGS, CO 80829			EXAMINER GRAVINI, STEPHEN MICHAEL	
			ART UNIT 3749	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/684,312
Filing Date: October 10, 2003
Appellant: SCHNEIDER, DONNA GAIL

MAILED

FEB 17 2006

Group 3700

Donna G. Schneider
Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 15, 2005 appealing from the Office action mailed May 17, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

Claims 1-7 and 14-16 are rejected under 35 USC 1-2(b) as being *clearly* anticipated by Slattery (US 4,508,096) (emphasis added); and

Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slattery in view of Bach (US 6,439,225).

Although appellant's statement is substantially correct, a more precise grounds of rejection is believed answered in response to appellant's brief.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 4,508,096	Slattery	4-1985
US 6,439,225	Bach et al.	8-2002

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

Claims 1-7 and 14-16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Slattery (US 4,508,096).

Claim Rejections - 35 USC § 103

Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slattery in view of Bach (US 6,439,225). Slattery is considered to disclose the claimed invention, as clearly anticipated under the rejection above, except for the claimed selective configuration features found in those claims. Bach, another device facilitating the heating of items, is considered to disclose selective configuration at column 8 lines 5-49. It would have been obvious to one skilled in the art to combine the teachings of Slattery with the selective configuration feature, considered disclosed in Bach, for the purpose of permitting panel removal and separate storage to affect the attribute of panel employment in forming a side.

(10) Response to Argument

Current Office practice permits use of an anticipatory rejection if a reference clearly anticipates a claimed invention under the Manual of Patent Examining Procedure (MPEP) 706.02(i) using form paragraph 7.15 discussed in that section. Also current Office practice, a subsequent action on the merits shall be final where the examiner introduces new grounds of rejection necessitated by an amendment under MPEP 706.07(a) which is considered in light of the examiner of the fact that in every case an Appellant is entitled to a full and fair hearing, and that a clear issue between Appellant and examiner should be developed, if possible, before appeal. However, it is to the interest of the Appellants as a class as well as to that of the public that prosecution of an application be confined to as few actions as is consistent with a thorough consideration of its merits.

anticipation

Each and every element and limitation of the claimed invention is considered found on the face of primary reference Slattery, such that Slattery clearly anticipates the claimed invention without further elaboration. Although appellant asserts section 132 of the Patent statute is violated and partially discussed the MPEP, current Office practice supports examiner's rejections as discussed above.

The face of Slattery anticipates each feature of the claimed invention comprising elements as follows:

a collapsible frame (please see compact and portable in the title along with assembly, parts, fasteners, and fit tightly in the abstract and figure which inherently

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anticipates a collapsible frame because collapsible frames are portable assemblies of parts fastened together to fit tightly) for suspending an item above a heat source (please see cooker, grill, and fire in the abstract which inherently anticipates the intended use of suspending an article above a heat source because a fire under a suspended grill in a cooker is a heat source), the frame comprising:

a plurality of panels **22, 24, 26, 28** forming sides of the frame when the frame is erected, wherein a side of the frame comprises a variable configuration of panels (please see abstract wherein the disclosed cover which may enclose other assembly parts is considered to expressly anticipate the variable panels configuration), the configuration being selected by a user of the device to adjust and attribute of the enclosure when the device is in use for heating (again please see abstract wherein the disclosed cover which may enclose other assembly parts is considered to expressly anticipate the user selected adjustments and attributes intended use), the attribute including at least one of: how much of the side is enclosed, which portion of the side is enclosed, a volume substantially enclosed by the frame and overall shape of the frame (wherein the abstract disclosed fasteners selectively the supporting end plates to the fire pan and mount it off the ground with the grill at different levels is considered to inherently anticipate the claimed volume enclosed because differing levels results in selected attributes of volume). Slattery is also considered to clearly anticipate the claimed detachably coupled panels at edges with particular physical dimensions with selective positioning with given second dimensions measurements different from a first in a vertical erected frame direction as discussed in the abstract and shown in the cover

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figure and an item to be heated (on the disclosed grill) being on a transverse member coupled to the frame removably coupled and holding in place panels that form a frame as discussed in the abstract and shown in the figure.

Specifically appellant argues that Slattery does not teach or suggest *a side of the frame comprises a variable configuration of panels*. Current Office practice guides examination such that claims are broadly and reasonably construed in light of the specification. Since Slattery shows panels **22, 24, 26, 28** forming sides of a frame and the abstract discloses transverse ribs on end plates providing different grill levels and front and rear side plates fitting tightly into end plates, this is considered to be broadly and reasonably construed to anticipate the argued feature because the different levels results in a variable configuration of panels, i.e. side panels may configured with a low grill or high grill above a fire pan. This claim construction is considered consistent with appellant's argued specification discussion in paragraph [0031] and figures 3-6. It also must be noted that limitations from the specification were not read into the claims such that the invention as claimed, is construed to be clearly anticipated by Slattery.

Appellant argues that Slattery does not form a frame. In paragraph [0007] of appellant specifies a set of side panels are provided which may be affixed to one another along adjacent edges to form a frame. The frame of Slattery is considered to be precisely defined by appellant's discussion of a frame.

Appellant further argues statements of intended use that patentably distinguish the claimed invention over the prior art. However, statements of intended use are not considered to impart patentability, unless the invention is structurally distinct from the

prior art. In this application, the claimed invention are considered to have all the features disclosed in the prior art.

Appellant lastly argues patentability by virtue of overcoming the independently claimed invention along with features dependently claimed. Each of the features discussed above are considered anticipated by the face of primary reference Slattery such that the anticipatory rejection is considered proper and therefore maintained.

With respect to appellant's concern over ambiguity over examiner's typographical error, the rejection has been updated to reflect prior art consistencies. Since the appeal brief and all papers were entirely submitted by appellant, it is advised that appellant seek advice from the registered practitioner cited in appellant's declaration in order to overcome any ambiguity concerns earlier in application prosecution rather on appeal.

obviousness

Claim construction under current Office practice guides the independently claimed configuration being selected by a user to be patentably distinct from the dependently claimed selective configurations including a quantity of panels employed in forming a side (claim 8), a combination of panels affecting both position and coverage (claim 9) or how much of the side is enclosed (claim 10), selectively positioning (claim 11), and panels supporting a side member (claim 12). Claim 13 is considered clearly anticipated by Slattery but rejected under Slattery in view of Bach by virtue of its dependency on claim 12. Each of these selective configuration features are considered to obviate the claimed invention because as appellant admits in the brief, folding sides to permit storage allows a variety of selectively configuration features.

Appellant further argues motivation is not found such that one skilled in the art would modify the teachings of Slattery with the teachings of Bach in order to obviate the claimed invention. In column 8 of Bach, the disclosed partial or complete enclosure, four or more individual screen panels, remain closed panels, and height increase extensions are considered to be motivation for one skilled in the art to selectively configure features claimed in light of Slattery when viewed in light of Bach.

Appellant asserts impermissible hindsight as a reason to overcome obviousness. In response to Appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Appellant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this application, claim analysis is considered to be thoroughly discussed from the perspective of one skilled in the art at the time the invention was made and not gleaned from appellant's disclosure.

The obviousness rejection is considered proper and therefore maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Stephen M. Gravini



Conferees:

Alfred Basichas



Ehud Gartenberg

